

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	8:04CR64
Plaintiff,)	
)	
vs.)	ORDER
)	
RUSSELL FRAUENDORFER,)	
)	
Defendant.)	

This matter is before the court on the defendant's (Frauendorfer) Motion to Fix Time for Submitting a Reply Pursuant to 28 U.S.C. § 2255 Rule 5(d) (Filing No. 102). In his motion, Frauendorfer requests this court to grant him until February 3, 2008 to reply to the Government's Answer to Defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Filing No. 98). Frauendorfer requests an enlargement of time in which to reply to the government's Answer because it takes Frauendorfer "more time to research legal issues" and Frauendorfer has restricted access to legal reference materials secondary to his current incarceration. See Filing No. 102.

On September 21, 2007, this court ordered that Frauendorfer had until November 20, 2007 to file a reply to the government's Answer filed October 22, 2007. See Filing No. 97. On November 19, 2007, Frauendorfer filed a Motion to Compel (Filing No. 100) in which he claimed he did not receive a copy of the government's Answer (Filing No. 98) and Brief in support of its Answer (Filing No. 99). On November 21, 2007, this court ordered the Clerk of the Court to send copies of the government's Answer and supporting Brief to Frauendorfer at his last known address. See Filing No. 101. The court will take into consideration that Frauendorfer recently received copies of the government's Answer and supporting Brief and will grant in part Frauendorfer's request for an extension of time to file his reply. Thus, the court will allow Frauendorfer an extension of forty-five days from the date of this order to reply to the government's Answer.

Frauendorfer also asked this court to order the government to supplement its Answer with copies of the cases *Brown v. United States*, 178 Fed. Appx. 590 (8th Cir. 2006) (unpublished), and *United States v. Moffie*, 2007 WL 2228640 (6th Cir. 2007), which

were cited in the government's brief in support of its Answer. See Filing No. 99. Frauendorfer claims he is unable to obtain copies of these cases due to his lack of computer access and the restricted number of legal research books available. See Filing No. 102. Although, Frauendorfer did not specify how he would be prejudiced if not granted access to such materials, the court finds that to deny Frauendorfer access to the necessary legal materials in order to formulate an adequate reply to the government's Answer would be the equivalent to the denial of Frauendorfer's right to access the courts. See *Lewis v. Casey*, 518 U.S. 343 (1996). Thus, the court will grant Frauendorfer's request by forwarding him a copy of the requested cases.

THEREFORE, IT IS ORDERED:

1. Frauendorfer's Motion to Fix Time for Submitting a Reply Pursuant to 28 U.S.C. § 2255 Rule 5(d) (Filing No. 102) is granted in part and denied in part.
2. Frauendorfer is granted an extension of **forty-five days** from the date of this order to file a reply to the government's Answer (Filing No. 98).
3. The court will send Frauendorfer copies of the cases *Brown v. United States*, 178 Fed. Appx. 590 (8th Cir. 2006) (unpublished), and *United States v. Moffie*, 2007 WL 2228640 (6th Cir. 2007), to Frauendorfer at his last known address.
4. The Clerk of the Court is ordered to send a copy of this order to Frauendorfer at his last known address.

DATED this 11th day of December, 2007.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge